

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

2006 MAY -2 PM 4: 59

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY RA
DEPUTY CLERK

TRAVIS CO. J.V.,
ROGER C. HILL, SR.,
and CHRISTOPHER HILL,

Plaintiffs,

VS.

HENNESSEE GROUP, LLC, ELIZABETH
LEE HENNESSEE and CHARLES J.
GRADANTE,

Defendants

CIVIL ACTION NO. SA-06-CA-0146-FB

**DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' SURREPLY
IN OPPOSITION TO DEFENDANTS' MOTION TO STAY**

Defendants Hennessee Group, LLC Charles Gradante and Elizabeth Lee Hennessee ("Defendants") hereby file their Motion to Strike Plaintiffs' Surreply in Opposition to Defendants' Motion to Stay and, in support thereof, state as follows:

1. On April 21, 2006, Defendants filed their Motion to Stay Proceedings in Light of the Consolidation of All Bayou Related Cases in the Southern District of New York ("Motion to Stay"). On April 26, 2006, Plaintiffs filed their Response to Defendants' Motion to Stay. Thereafter, on May 1, 2006, Defendants filed their Reply in Support of their Motion to Stay.

2. On May 2, 2006, and in complete derogation of Local Rule CV-7(e), Plaintiffs filed a Surreply in Opposition to Defendants' Motion to Stay without first obtaining leave from the Court ("Surreply").

3. W.D. Tex. Local Rule CV-7(e) provides:

A party may file a reply in support of a motion. Any reply shall be filed within eleven (11) days of service of the response, but the court need not wait for the reply before ruling on the motion. A reply shall be limited to five (5) pages, unless otherwise authorized by the Court. Absent leave of Court, no further submissions on the motion are allowed. (emphasis added).

See Underwood v. East Texas State University, No. CIV. A. 3:96-CV-2739-G, 1998 WL 223695 (N.D. Tex. April 28, 1998) (striking plaintiff's surreply under the substantively similar local rule for the Northern District of Texas, which precludes the filing of a surreply without first obtaining leave from the court).

4. Plaintiffs have not complied with the local rules and, therefore, their Surreply should be stricken by the Court.

WHEREFORE, Defendants respectfully request that the Court enter an Order Striking Plaintiffs' Surreply in Opposition to Defendants' Motion to Stay.

Respectfully submitted,
JENKENS & GILCHRIST, P.C.

By: 

SEAGAL WHEATLEY
CHARLES L. SMITH
Jenkins & Gilchrist, P.C.
112 East Pecan, Suite 900
San Antonio, Texas 78205
Telephone: 210-246-5000
Fax: 210-246-5999

ELLEN SESSIONS
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
Telephone: 210-855-4500
Fax: 214-855-4300

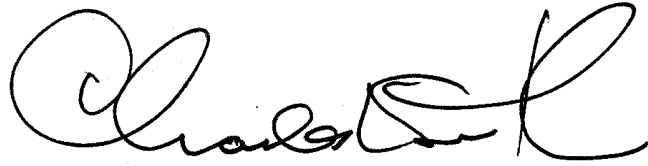
BENNETT FALK
BRIAN AMERY
Bressler, Amery & Ross, PC
Huntington Centre II
2801 SW 149th Avenue
Miramar, FL 33027
Telephone: 954-430-7811 (Falk)
Fax: 954-499-7969

Attorneys for Defendants HENNESSEE
GROUP LLC, ELIZABETH LEE
HENNESSEE AND CHARLES
GRADANTE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record by certified mail, return receipt requested, on this 2nd day of May, 2006:

Marvin G. Pipkin
PIPKIN, OLIVER & BRADLEY, LLP.
1020 N.E. Loop 410, Suite 810
San Antonio, Texas 78205

A handwritten signature in black ink, appearing to read "Charles L. Smith", written over a horizontal line.

CHARLES L. SMITH
SEAGAL WHEATLEY